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09/742,631	12/20/2000	Paul E. Furner	J-2781A	9316

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EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/18/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/742,631

Applicant(s)

FURNER ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 is/are allowed.
- 6) ☒ Claim(s) 1-12 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Schirneker (WO 96/02794).

Schirneker teaches a fuel burner including a solid fuel element **W**, a heat conductive concave container **2** for the fuel element, and a non-consumable wick **3** affixed to the bottom of the container. As shown in Figures 11 and 13, container is shaped to cause the flow of melted fuel to said wick. Moreover, wick holder **5** cooperatively engages the fuel element.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
6. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirneker (WO 96/02794).

With respect to claim 22, although Schirneker specifically teaches that the container 2 is to be made of metal and be heat conductive, it is not known if the metal is one of those claimed by the instant invention. However, the use of aluminum, copper, and brass is taught for other elements (page 9, lines 4-5) and it is deemed obvious to the skilled practitioner to employ suitable metals for the container.

As to claim 23, a heat-conductive element 4 surrounds the wick and may be a finned wick-holder as in Figures 2 and 3 or one of various other configurations.

7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirneker (WO 96/02794) in view of Moore (U.S. Patent No. 4,427,366) or Zaunbrecher et al (U.S. Patent No. 5,955,034).

Schirneker teaches a fuel burner including a solid fuel element W, which may be

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paraffin, a heat conductive concave container 2 for the fuel element, and a wick 3 affixed to the bottom of the container. As the wick burns the fuel, the heat melts the fuel, which is consumed by the wick. Element 5 cooperatively engages the fuel element. A heat-conductive element 4 surrounds the wick and may be a finned wick-holder as in Figures 2 and 3 or one of various other configurations. It is submitted that the shape of the heat-conductive element is not patentable where the general structure and function of the element are known in the art. The fuel element of Schirneker is not disclosed to contain a volatile active material.

Moore discloses a scented candle wherein odorizing chips are formed of paraffin or candle wax and a scent. See col.1, lines 37-41. Zaunbrecher et al teaches a scented candle wherein the candlewax incorporates an air freshener ingredient. See Abstract.

As Schirneker teaches that the solid fuel element may be candle remainders (page 12, lines 3-5 of the second full paragraph), it would have been obvious to use scented candle remainders.

8. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirneker (WO 96/02794) in view of Hammons et al (U.S. Patent No. 5,840,246) and either Moore (U.S. Patent No. 4,427,366) or Zaunbrecher et al (U.S. Patent No. 5,955,034).

Schirneker teaches a fuel burner including a solid fuel element W, which may be paraffin, a heat conductive concave container 2 for the fuel element, and a wick 3 affixed to the bottom of the container. As the wick burns the fuel, the heat melts the fuel, which is consumed by the wick. Element 5 cooperatively engages the fuel element. A heat-conductive element 4 surrounds the wick and may be a finned wick-holder as in Figures 2

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and 3 or one of various other configurations. It is submitted that the shape of the heat-conductive element is not patentable where the general structure and function of the element are known in the art. The wick **3** of Schirneker is non-consumable and the fuel element is not disclosed to contain a volatile active material.

Hammons et al teaches that consumable (e.g. cotton) and non-consumable (e.g. glass fiber) wicks are suitable for delivering liquid fuel to a flame. See col.4, line 56 to col.5, line 11. Given the teachings of Hammons et al, the substitution of a consumable wick for the non-consumable wick of Schirneker is considered to be obvious to one of ordinary skill in the art, so long as the chosen wick is capable of delivering the liquid paraffin to the flame and is slowly consumed.

Moore discloses a scented candle wherein odorizing chips are formed of paraffin or candle wax and a scent. See col.1, lines 37-41. Zaunbrecher et al teaches a scented candle wherein the candlewax incorporates an air freshener ingredient. See Abstract.

As Schirneker teaches that the solid fuel element may be candle remainders (page 12, lines 3-5 of the second full paragraph), it would have been obvious to use scented candle remainders.

9. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oesterle et al (U.S. Patent No. 2,713,256) in view of Zaunbrecher et al (U.S. Patent No. 5,955,034).

Oesterle et al teaches a solid replacement element **B**. The element **B** includes a solid candle wax fuel and a consumable wick **6**, wherein the element **B** is configured to cooperatively engage container **A** (dispenser). See Figure 3. Oesterle et al is silent as to whether the fuel element **B** also includes a volatile active material. Zaunbrecher et al

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teaches a scented candle wherein the candlewax incorporates an air freshener ingredient.

See Abstract. As candles commonly incorporate a volatile that is generated by the candle's heat, it would have been obvious that a scented candle would be used by Oesterle et al. Moreover, Zaunbrecher et al teaches that suitable candle waxes include beeswax, paraffin, montan wax, carnauba wax, microcrystalline wax, fatty alcohols, and fatty esters (col.2, lines 17-22). As suitable candles waxes are well-documented in the prior art, it would have been obvious to one of ordinary skill in the art to choose one of the waxes described by Zaunbrecher et al for use in the candle of Oesterle et al.

#### ***Allowable Subject Matter***

10. Claims 13-16 are allowed.

11. The following is a statement of reasons for the indication of allowable subject matter: Schirneker teaches a simmer plate dispenser with a replaceable fuel element, but fails to teach a construction of the device such that "the temperature of said pool of liquid fuel exceeds a temperature of about 180 °F at a point about 10 mm from said wick, and about 160 °F at a point about 20 mm from said wick".

#### ***Information Disclosure Statement***

12. The information disclosure statement filed June 12, 2001 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English

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language. It has been placed in the application file, but the information referred to therein has not been considered.

*Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 703-305-3387. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
August 11, 2003